

## REMARKS

Applicants acknowledge receipt of an Office Action dated November 5, 2008 and advisory action dated February 13, 2008. In this response, Applicants respectfully request admission of the amendments offered in the amendment under 37 C.F.R. § 1.116, filed February 5, 2009. Applicants have amended claim 1 and canceled claim 10. Support for the amendments may be found, *inter alia*, in Fig. 1. Claims 1-9 and 11-17 are pending in the application.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### Objection To Claim 10

Applicants have canceled claim 10. Withdrawal of the objection is respectfully requested.

### The Claims As Amended Are Patentable Over The Cited Prior Art

The Office Action rejected claim 1 of the application under 35 U.S.C. § 102(b) over U.S. Pat. No. 5,567,258 (“Baumann”). The remaining claims are also rejected over Baumann either alone or in combination with other references. Reconsideration is respectfully requested.

In the previous amendment, it was argued that Baumann does not disclose at least “a deflection mirror is provided behind the objective optical path, when viewed from the user’s position”. In the Response to Arguments section of the Office Action it was noted that the “user’s position” of claim 1 is ambiguous. It was also noted that it is possible to interpret the phrase “behind the objective optical path” from the perspective of the direction of light travel.

Applicants have amended claim 1 herewith to resolve these ambiguities. The reference to a “user’s position” has been replaced with a reference to the structural element before which the user is typically located. The phrase “behind the objective optical path” has been amended to specify that the objective optical axis is positioned between a deflection mirror and the binocular head. These amendments are not intended to modify the scope of claim 1 or surrender subject matter relative to the prior art, but rather are intended to clarify any potential ambiguities in the claim language.

The remaining claims are ultimately dependent from claim 1 and patentable for at least the same reasons.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 102.

### CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By 

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